

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
PLAYTEX PRODUCTS, INC.,

Plaintiff,

- against -

THE PROCTER & GAMBLE COMPANY,

Defendant.
----- X

08-civ-1532 (WHP) (THK)

First Complaint Filed by
Playtex Products, Inc.

Plaintiff Demands Trial by Jury

Pursuant to the Stipulation and Order to realign the parties endorsed by the Court on September 2, 2008, Plaintiff Playtex Products, Inc. ("Playtex") alleges for its complaint, upon personal knowledge as to its own actions and upon information and belief as to the actions of defendant The Procter & Gamble Company ("P&G"), as follows:

INTRODUCTION

1. This is an action seeking injunctive relief and damages for willful false advertising in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

THE PARTIES

2. Playtex is and was at all relevant times a Delaware corporation headquartered in Westport, CT.

3. Playtex has been manufacturing tampons since 1968 and has been an industry leader in the plastic applicator segment for years with its Gentle Glide product.

4. Since May 2007, Playtex has marketed and sold an improved version of its flagship Gentle Glide plastic applicator tampon product (“New Gentle Glide”), in interstate commerce and in this judicial district.

5. P&G is and was at all relevant times an Ohio corporation headquartered in Cincinnati, Ohio.

6. In 2002, P&G entered the plastic applicator segment of the tampon market with the launch of its Tampax Pearl product in the United States.

7. Since October 2005, P&G has marketed and sold an allegedly improved version of its Tampax Pearl product (“New Pearl”) in interstate commerce and in this judicial district.

8. Playtex and P&G are the two principal competitors in the plastic applicator tampon market segment.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 & 1338(a), and 15 U.S.C. § 1121.

10. This Court has personal jurisdiction over defendant P&G by virtue of P&G’s sales and advertising of Tampax Pearl within this judicial district.

11. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c).

P&G's FALSE ADVERTISEMENTS

12. Beginning on or about March 2008, P&G began airing television ads claiming that "it is time to upgrade" to New Pearl plastic tampon, which, "with three fabulous details" (including a "built-in backup® braid") "protects even better than the next leading brand."

13. On or about March 2, 2008, P&G ran a print ad (a true and accurate copy of which is attached hereto as Exhibit A) in the Washington Post newspaper stating that "Women choose Tampax 2 to 1 ... Based on sales volume vs. the next leading brand." The ad refers to New Pearl as "The tampon with unique built-in backup® protection."

14. On or about May 1, 2008, P&G ran a print ad (a true and accurate copy of which is attached hereto as Exhibit B) in Cosmopolitan magazine that stated, "A leak can ruin everything. Why risk it? Only Tampax has LEAKGUARD™ Built-in Back-up® to help stop leaks before they start. So don't be fooled by look-alikes. Look before you leak." The ad further includes a graphic labeled "LEAKGUARD™ Braid."

15. On or about May 4, 2008, P&G ran a print ad (a true and accurate copy of which is attached hereto as Exhibit C) in the Washington Post newspaper that stated, "look before you leak... not all products are created equal... Look to LeakGuard™ for powerful protection against leaks." The ad includes a graphic labeled "unique LeakGuard braid."

16. On or about June 1, 2008, P&G ran a print ad (a true and accurate copy of which is attached hereto as Exhibit D) in Seventeen magazine stating, "A leak can ruin everything. Why risk it? Only Tampax Pearl Plastic® has LEAKGUARD™ protection built-

in to give you more leak-free periods than the next leading brand.” The ad includes a graphic labeled “LEAKGUARD Braid and Core.”

17. On or about June 30, 2008, P&G began to air ads on national television claiming that “only Tampax Pearl has LeakGuard... for more leak-free periods than the next leading brand.” P&G is scheduled to run a print ad on or about September 1, 2008 in Fitness Magazine (a true and accurate copy of which is attached hereto as Exhibit E) containing a similar claim. On or about August 11, 2008, P&G launched a banner ad (a true and accurate copy of which is attached hereto as Exhibit F) on www.walmart.com making a similar claim.

18. On or about July 6, 2008, P&G ran a print ad on the Los Angeles Times (a true and accurate copy of which is attached hereto as Exhibit G) stating “Get LeakGuard™ Protection, only from Tampax® ...With unique built-in backup that helps stop leaks before they happen.”

19. On or about July 9, 2008, P&G began to air ads on national television claiming that “only Tampax Pearl has LeakGuard protection to make leak-free periods possible.” The ad simultaneously displays graphics labeled “LEAKGUARD™ Braid.”

20. On or about August 1, 2008, P&G ran a print ad (a true and accurate copy of which is attached hereto as Exhibit H) in Cosmo Girl stating that “Tampax Pearl® has LeakGuard™ Backup protection built in for more leak-free periods than the next leading brand.” The ad further includes graphics labeled “LEAKGUARD™ Braid + LEAKGUARD™ Core = Bye-Bye Backup.”

21. On or about August 8, 2008, P&G launched banner ads (a true and accurate copy of which are attached hereto as Exhibit I) on www.mtv.com/ontv/fn-mtv stating that Tampax Pearl has “built-in back-up,” and features graphics labeled “LEAKGUARD™ Braid + LEAKGUARD™ Core = Bye-Bye Backup.” The banner ads drive web traffic to <http://beinggirl.com>, a website that is operated by P&G. P&G states on <http://beinggirl.com> that “Tampax Pearl has LeakGuard Protection to stop leaks better than the next leading brand.” A true and accurate copy of the competitive reference made on <http://beinggirl.com> is attached hereto as Exhibit J.

22. The ads referred to in paragraphs 12-21 (collectively, the “Spring 2008 Ad Campaign”) were distributed in interstate commerce.

23. Playtex’s New Gentle Glide is the “next leading brand.”

COUNT I
(False Advertising in violation of the Lanham Act)

24. Playtex re-alleges paragraphs 1-23 and incorporates them by reference.

25. P&G has no *in vivo* comparative testing supporting a claim that New Pearl protects better than Playtex’s New Gentle Glide.

26. Scientific testing conducted by Playtex shows that there is no difference in protection as between New Pearl and New Gentle Glide.

27. The claims in the Spring 2008 Ad Campaign that expressly and/or impliedly attribute New Pearl’s allegedly superior leakage protection to the LEAKGUARD™ Braid are false and misleading.

28. Accordingly, each ad in P&G's Spring 2008 Ad Campaign is literally false and/or misleading.

29. P&G's Spring 2008 Ad Campaign has deceived and/or has the capacity to deceive a substantial portion of consumers of plastic applicator tampons, and has impaired and/or has the capacity to impair Playtex's goodwill and reputation.

30. Playtex has been the leader in the plastic tampon market segment for decades, and Gentle Glide represents a significant portion of its market share.

31. Therefore, P&G's Spring 2008 Ad Campaign has caused and will continue to cause Playtex immediate and irreparable harm unless enjoined.

32. P&G has knowingly and willfully disseminated these false and misleading claims.

PRAYER FOR RELIEF

WHEREFORE, Playtex requests that this Court enter judgment holding:

(a) that P&G's advertising is false and misleading in violation of the Lanham Act and that such false advertisements are willful;

(b) that P&G, and those acting in concert with it, be preliminarily and permanently enjoined from making false claims about its Tampax Pearl tampons and/or New Gentle Glide;

(c) that Playtex be awarded damages, including pre- and post-judgment interest, adequate to compensate Playtex for P&G's willful false advertising;

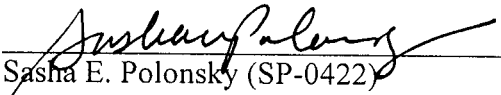
- (d) that such false advertising damages be trebled pursuant to 15 U.S.C. §1117 for willful infringement of § 43(a) of the Lanham Act; and
- (e) awarding Playtex such further relief as the Court deems just and proper.

JURY DEMAND

Playtex demands trial by jury pursuant to Federal Rule of Civil Procedure 38(b).

Dated: September 3, 2008

DAVIS POLK & WARDWELL

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Attorneys for Plaintiff Playtex Products, Inc.

Exhibit A

Women choose TAMPAX®

2 to 1*

Find out why.

Purchase Tampax today and save.



The tampon with unique built-in backup® protection.

*Based on sales volume vs. the next leading brand.

©2008 P&G

MANUFACTURER COUPON

EXPIRATION DATE: 03/31/08

\$100 Off

any two (2) Tampax®,
Tampax Compak Pearl
or Tampax Pearl
(18ct or higher)



P&G brandSAVER

CONSUMER: Redeem ONLY by purchasing the brand size(s) indicated. May not be reproduced. Void if transferred to any person, firm, or group prior to store redemption. You may pay any sales tax. Any other use constitutes fraud. **LIMIT ONE COUPON PER PURCHASE.**

DEALER: Sending to Procter & Gamble, 2150 Sunnybrook Drive, Cincinnati, OH 45237, signifies compliance with "Requirements for Proper Coupon Redemption." Copy available by writing to the above address. Cash Value 1/100 of 1¢. Procter & Gamble 080302

9555/0 ©2008 P&G

0073010-075356

0073010-10033

0037000-075354

0037000-48020

0037000-075355

0037000-48433

20¢ Off

any one (1) Always®
Pads, Clean or Feminine
Cleansing Cloths



P&G brandSAVER

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©2008 P&G

MANUFACTURER COUPON

EXPIRATION DATE: 03/31/08

\$100 Off

any two (2) Always®
Pantliners
(34ct or higher)



P&G brandSAVER

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©2008 P&G

Exhibit B

A leak can ruin everything.

Why risk it?
Only Tampax
has LEAKGUARD™
Built-in Backup®
to help stop leaks
before they start.
So don't be fooled
by look-alikes.

Look before
you leak.



LeakGuard Braid



LeakGuard Skirt

Exhibit C

look before you leak

Messing with your feminine protection is risky business—
not all products are created equal. Tampax® and Always®
have LeakGuard™—unique built-in backup protection that helps
stop leaks before they happen.

Look to LeakGuard™ for powerful protection against leaks.



MANUFACTURER COUPON
\$1.00 Off

any two (2) Tampax®,
Tampax Compak Pearl
or Tampax Pearl
(18ct or higher)



P&G brandSAVER

CONSUMER: Redeem ONLY by purchasing the brand size(s) indicated. May not be reproduced. Void if transferred to any person, firm, or group prior to store redemption. You may pay any sales tax. Any other use constitutes fraud. **LIMIT ONE COUPON PER PURCHASE.**

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MANUFACTURER COUPON
\$1.00 Off

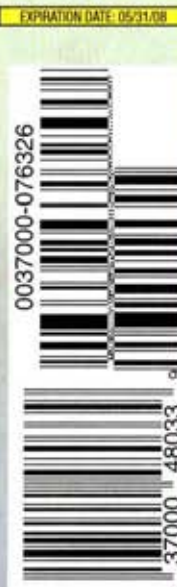
any two (2) Always®
Pad, Clean or Feminine
Cleansing Cloths



P&G brandSAVER

CONSUMER: Redeem ONLY by purchasing the brand size(s) indicated. May not be reproduced. Void if transferred to any person, firm, or group prior to store redemption. You may pay any sales tax. Any other use constitutes fraud. **LIMIT ONE COUPON PER PURCHASE.**

DEALER: Sending to Procter & Gamble, 2150 Sunnybrook Drive, Cincinnati, OH 45237, signifies compliance with "Requirements for Proper Coupon Redemption." Copy available by writing to the above address. Cash Value 1/100 of 1¢. Procter & Gamble 080504 ©2008 P&G



MANUFACTURER COUPON
\$1.00 Off

any two (2) Always®
Pantliner
(3Act or higher)



P&G brandSAVER

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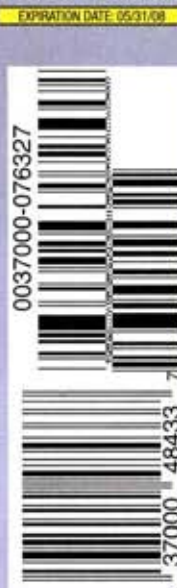


Exhibit D

A leak can ruin everything.

Why risk it? Only
Tampax Pearl Plastic®
has LEAKGUARD™ protection
built in to give you more
leak-free periods than the
next leading brand.
So look before
you leak.



LeakGuard
Braid and Core

For more information on Tampax Pearl, go to www.beinggirl.com

Exhibit E

fall must haves

FOR MIND, BODY + SPIRIT



With us, it's personal.

Fall is here and it's time to look and feel great all season. Whether you want to get fit, lose weight or refresh your look, these fall finds are a must. Receive a \$10 Rite Aid Gift Card by purchasing any two products featured. SEE DETAILS BELOW.

Gift Card

Olay Total Effects Touch of Foundation



OLAY

New Olay Total Effects Touch of Foundation is an all-in-one daily moisturizer that provides 7 anti-aging benefits in 1 vitamin rich formula. It also contains a touch of sheer foundation to instantly smooth away the appearance of wrinkles and balance uneven tone.

For more information, visit www.Olay.com.

Tampax Pearl Regular 20 ct



TAMPAX PEARL

Only Tampax Pearl has LeakGuard protection built-in for more leak free periods than the next leading brand.

For more information, visit www.Tampax.com.

Fall Fit Tip: Prepare for autumn air — moisture your skin daily and exfoliate to eliminate toxins.

Fall Fit Tip: Fall is a busy time so when hormones hit, choose a protection that's comfortable, discreet and easy to p

Secret Clinical Strength Sport, Marathon Fresh Scent



Beating odor is no sweat. Introducing New Secret Clinical Strength Sport, with a self-renewing sport scent designed for athletes. So the harder you work, the harder it works.

For more information, visit www.Secret.com.

Metabolife Ultra®



MetaboLife

Introducing Metabolife's New Two-Weight Management Program. You are exercising. You are eating better. You are making the right choices. And Metabolife is with you every step of the way. Get started with Metabolife Ultra® our premier stage one product, and start getting the life you deserve.

For more information, visit Metabolife.com.

Fall Fit Tip:

Hit the sauna after the gym to keep pores flushed and fresh.

Fall Fit Tip: Discover a new you — make a healthy diet and exercise plan so you can enjoy Fall's fabulous fashion.

PROGRAM DETAILS: The first 2,500 readers to send in an original receipt for any two (2) of the featured products purchased 8/12/08-9/9/08 will receive a \$10.00 Rite Aid gift card. Include your name, address, daytime phone number and send to: FITNESS Magazine, Fall Must Haves, attn: Katherine Wegert, 125 Park Avenue, NY, NY 10017. Must be U.S. resident, 18 yrs or older. One (1) Rite Aid gift card per household. Gift card subject to issuer restrictions. Offer begins 8/12/08 and good while supply last. Meredith Corporation d/b/a Fitness® ("Sponsor") not responsible for lost, late, damaged, misdirected, incomplete, incorrect, illegible requests/mail. Allow 6-8 wks for shipping.

Exhibit F

Pearl of Wisdom:

**THE BEST THINGS IN LIFE
SHOULD BE LEAK FREE**



Outsmart Mother Nature

TAMPAX

**Tampax® Pearl with Leakguard™
Helps Stop Leaks Before They Happen.**



Only Tampax® Pearl has the LeakGuard™ braid and core protection built in, for more leak-free periods than the next leading brand. And now, you can sample Tampax® Pearl with LeakGuard™! When your period goes smoother, your life goes smoother, so try the Pearl now. And buy it for less at your local Wal-Mart, where saving money and living better go hand-in-hand.

Visit www.tampax.com today for more information.

Exhibit G

**Buy one Always product,
get one FREE with coupon!**



always
Unique LeakGuard™
Core + Barriers



**Get LeakGuard™ Protection,
only from Tampax® and Always®.**

With unique built-in backup that helps
stop leaks before they happen.

**Unique LeakGuard™ Braid
on Tampax Pearl**



Leak-free periods are possible with Tampax!

TAMPAX

MANUFACTURER COUPON
EXPIRATION DATE: 07/31/08
Get One 12-24ct
FREE
any Always® Pads
\$
Cashier, write in retail value.

P&GbrandSAVER
CONSUMER: Redeem **ONLY** by purchasing the brand size(s) indicated. May not be reproduced. Void if transferred to any person, firm, or group prior to store redemption. You may pay any sales tax. Any other use constitutes fraud. **LIMIT ONE COUPON PER PURCHASE.**
DEALER: Sending to Procter & Gamble, 2150 Sunnybrook Drive, Cincinnati, OH 45237, signifies compliance with "Requirements for Proper Coupon Redemption." Copy available by writing to the above address. Cash Value 1/100 of 1¢.
Procter & Gamble 080706 ©2008 P&G



MANUFACTURER COUPON

EXPIRATION DATE: 07/31/08

50¢ Off
any Always® Pantiliner
(34ct or higher)

P&GbrandSAVER

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Procter & Gamble 080706 ©2008 P&G



MANUFACTURER COUPON

EXPIRATION DATE: 07/31/08

\$1 Off
any Tampax® Compak
Pearl or Tampax Pearl
(18ct or higher)

P&GbrandSAVER

CONSUMER: Redeem **ONLY** by purchasing the brand size(s) indicated. May not be reproduced. Void if transferred to any person, firm, or group prior to store redemption. You may pay any sales tax. Any other use constitutes fraud. **LIMIT ONE COUPON PER PURCHASE.**
DEALER: Sending to Procter & Gamble, 2150 Sunnybrook Drive, Cincinnati, OH 45237, signifies compliance with "Requirements for Proper Coupon Redemption." Copy available by writing to the above address. Cash Value 1/100 of 1¢.
Procter & Gamble 080706 ©2008 P&G



MANUFACTURER COUPON

EXPIRATION DATE: 07/31/08

50¢ Off
any Tampax®
(18ct or higher)

P&GbrandSAVER

CONSUMER: Redeem **ONLY** by purchasing the brand size(s) indicated. May not be reproduced. Void if transferred to any person, firm, or group prior to store redemption. You may pay any sales tax. Any other use constitutes fraud. **LIMIT ONE COUPON PER PURCHASE.**
DEALER: Sending to Procter & Gamble, 2150 Sunnybrook Drive, Cincinnati, OH 45237, signifies compliance with "Requirements for Proper Coupon Redemption." Copy available by writing to the above address. Cash Value 1/100 of 1¢.
Procter & Gamble 080706 ©2008 P&G



Exhibit H

SORRY, NO RETURNS

SOMETIMES YOUR PERIOD IS ANYTHING BUT A "GIFT," ESPECIALLY IF YOU NEED A LINER TOO. THAT'S WHY TAMPAX PEARL[®] HAS **LeakGuard[®]** BACKUP PROTECTION BUILT IN FOR MORE LEAK-FREE PERIODS THAN THE NEXT LEADING BRAND. SO YOU COULD SAY GOODBYE TO BACKUP. AND THAT'S A GIFT IN ITSELF.



Outsmart Mother Nature
TAMPAX

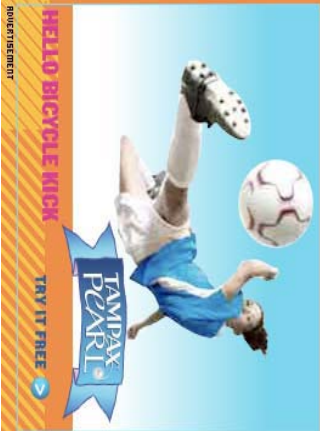


FOR A FREE SAMPLE, VISIT BEINGGIRL.COM/TAMPAX

Exhibit I



BYE, BYE BACKUP



HELLO BICYCLE KICK



HELP KEEP MOTHER NATURE ON THE SIDELINES



GET LEAKGUARD BUILT RIGHT IN

Tampax Banners seen on www.mtv.com/ontv/fn-mtv on 8/8/08



BYE, BYE BACKUP



HELLO BIKINI



HELP KEEP MOTHER
NATURE OUT OF YOUR
SUMMER PLANS



GET LEAKGUARD
BUILT RIGHT IN

Tampax Banners seen on www.mtv.com/ontv/fn-mtv on 8/8/08

Exhibit J



BE PREPARED FOR MOTHER NATURE, EVEN WHEN YOU HIT THE BEACH.

TAMPAX PEARL HAS *LeakGuard* PROTECTION
TO STOP LEAKS BETTER THAN THE NEXT LEADING BRAND.
SO YOU COULD SAY BYE-BYE BACKUP AND HELLO TO YOUR
FAVORITE BIKINI. GET YOUR FREE SAMPLE TODAY.

